SUPREME COURT, U. S.

MOTION FILED

MAR 17 1972

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1971

Nos. 71-1016 and 71-1040

FEDERAL POWER COMMISSION, *Petitioner*,

v.

LOUISIANA POWER & LIGHT CO., ET AL., *Respondents*.

UNITED GAS PIPE LINE CO. AND PENNZOIL UNITED, INC., *Petitioner*,

v.

LOUISIANA POWER & LIGHT CO., ET AL., *Respondents*.

On Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit

## MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF OF COLUMBIA GAS TRANSMISSION CORPORATION, AMICUS CURIAE, IN SUPPORT OF PETITIONERS

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March 17, 1972

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**On Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit**

## MOTION OF COLUMBIA GAS TRANSMISSION CORPORATION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

Columbia Gas Transmission Corporation (Columbia) hereby moves pursuant to Rule 42 of this Court for leave to file its Brief *Amicus Curiae*. In view of the short briefing schedule, it was not physically possible to obtain the written consent of the parties as provided in Rule 42. Request for such consent is being made contemporaneously with the service of this Motion and, if received, such consents will be filed pursuant to Rule 42.

The interests of Columbia as *Amicus Curiae* are stated under the appropriate heading in the attached Brief. The essential interest of Columbia is to present the concern of Columbia, as an indirect purchaser of natural gas from United Gas Pipe Line Company (United) and as a major supplier of gas to a highly important area of this country. The impact of the lower court's decision on Columbia would be substantial. Columbia believes that its interest will not be adequately represented by other parties.

Columbia respectfully submits that its presentation will assist this Court in its review of the lower court decision, and hereby moves for leave to file its Brief *Amicus Curiae*.

Respectfully submitted,

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**On Writs of Certiorari to the United States Court of Appeals for the Fifth Circuit**

## BRIEF OF COLUMBIA GAS TRANSMISSION CORPORATION, AMICUS CURIAE, IN SUPPORT OF PETITIONERS

### INTEREST OF COLUMBIA GAS TRANSMISSION CORPORATION, AMICUS CURIAE

Columbia Gas Transmission Corporation (Columbia) is a natural gas company subject to the regulatory jurisdiction of the Federal Power Commission (Commission) under the Natural Gas Act (The Act), 52 STAT. 821-833, as amended, 15 U.S.C. 717-717w.

Columbia furnishes natural gas to four million ultimate consumers in the seven state area of Kentucky, Maryland, New York, Ohio, Pennsylvania, Virginia, West Virginia and in the District of Columbia. With one very minor exception, all of Columbia's sales are sales for resale in interstate commerce subject to the Commission's jurisdiction.

Columbia purchases gas indirectly from United Gas Pipe Line Company (United) through two other pipeline companies, Texas Eastern Transmission Corporation (Texas Eastern) and Texas Gas Transmission Corporation (Texas Gas) pursuant to agreements and rates subject to the Commission's continuing jurisdiction. Columbia also purchases gas from three other pipeline companies, which do not purchase gas from United. In addition to Texas Eastern, two other natural gas pipeline companies are presently unable to make full contract deliveries to Columbia.

All service volumes and agreements with the foregoing suppliers were certificated by the Commission. In reliance thereon, Columbia has taken on substantial contractual obligations, which in turn have been the basis for its distribution customers, located in the foregoing seven states and the District of Columbia, committing to serve millions of residential and thousands of commercial and industrial customers.

Columbia, during the past two years, has implemented increasing restrictive sales limitation policies as a result of the natural gas shortage. Columbia has recently advised its customers that it will not make any increased sales during the next winter season. Columbia has also filed a comprehensive curtailment plan with the Commission. As a result, many of Columbia's dis-

tribution customers have taken steps to stop providing additional service of any kind to existing or new customers, including residential consumers.

The significance of the foregoing is that any substantial reduction in Columbia's existing supply by reason of the Fifth Circuit's decision (a result that seems inevitable) is that *existing* customers (literally thousands of industries with thousands of employees) could be sharply curtailed. The adverse ramifications of such reduction must be considered by the Commission, together with many other factors in arriving at appropriate allocation of United's gas. Accordingly, the Fifth Circuit's denial of the Commission's jurisdiction over allocation of United's service to its direct sales, should be reversed.

Columbia's interest thus is simply that it must protect existing service to a vitally important area of this nation. The decision under review threatens Columbia's public service obligation by directly affecting a substantial part of its gas supply and by creating a legal precedent which could jeopardize Columbia's gas supply from other pipeline companies.

## ARGUMENT

Columbia assumes that Petitioners and other *amici curiae* in support of Petitioners will fully present the legal arguments in support of the proposition that the Commission has continuing jurisdiction over all transportation of gas in interstate commerce by natural gas pipelines, including transportation of gas for direct industrial sales of the nature purchased by Louisiana Power & Light Company from United.

It is also assumed that there will be adequately presented the argument that all parties necessary to an allocation of gas on United's system were not joined and made parties to the proceedings here subject to review.

Against this background, Columbia submits the following for the consideration of the court:

The decision of the Fifth Circuit is in direct contradiction of the Commisson's determination of jurisdiction in its Opinions 606 and 606-A. The decision would permit random determinations by local courts of allocations of natural gas supplies of natural gas companies. Such random determinations would result in utter chaos throughout the industry and the country. If the Fifth Circuit decision is allowed to stand, its application to other direct industrial sales by United and by all other interstate pipelines lacking adequate supplies to meet their contractual commitments will have an immediate disastrous effect not only on Columbia but on the ultimate gas consumers through the country.

The administrative proceeding before the Commission in the United's curtailment proceeding at Commission Docket No. RP71-29 consisted of 44 days of contested hearings. The conflicting issues of public interest are in the record and have been voluminously briefed. Detailed analysis of many complex interrelated factors are involved in such proceedings. It is inconceivable that service to one customer (such as Louisiana Power & Light) or one group of customers (such as direct industrial customers) could be segregated for separate treatment by a court with relatively little expertise in such matters.

Simply stated:

(i) Since the Commission has jurisdiction under Section 7 of the Act to certificate the interstate transportation of gas for both direct and jurisdictional sales;

(ii) It is inconceivable that, at some subsequent time when the gas supply is inadequate to support all the sales, the Commission is powerless under the Act to determine the appropriate allocation of the shortage among all the sales.

Yet, this is exactly the effect of the Fifth Circuit Court's holding.

## CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Fifth Circuit's decision as to jurisdiction must be reversed.

Respectfully submitted,

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